Previous references.

1903-04
(Courts)

File No. 79

Serial Nos. 1 – 5

Later references.
Courts 65 of 05

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-5

Part B. for

SUBJECT.

Prosecution of Municipality Hospital Assistant of the Sirsa Tahsil

Table of Contents

1 & 2 of 04 From the Dy Comr Jullundur No 640 dy 11-6-04
Requesting sanction to prosecute Hospital Assistant Municipal under Chap II of I P Code.
3 & 4 of 04 From the Dy Comr Jullundur No 658 dy 25/6/04
Requesting early sanction for prosecuting the Hospital Assistant Municipal
5 of 04 To the Senior Surgeon No 2792 dy 28-6-04
Forwarding the above letter & requesting his opinion in the case

G. R. S. 58

V.S.C. No 4 To the Senior Surgn No 2621 of 30-6-04
For warning copy of letter No 65 S
of 25th June 1904 from the Dy Asst Commissy
Regulating early supply on the subject.

V.S.C. No 5 From the Senior Surgn
No 52 of 23rd July 1904
Stating that a full reply has
already been furnished with his
No 422. of 11-7-1904.

Office Note

Branch Judicial

Subject "Prosecution of Hospital Assistant Nanjundaiah of the Sira Taluk -

Letter No 640 dated the 11th June 1904 from the Deputy Commr, Tumkur Dt requesting sanction to the - - - - - - - for the offence of fabricating false evidence under section 192 of the I. P. C.

The case against the Hospital Assistant is that he made a false entry in the post mortem certificate drawn up by him in connection with a case of death by drowning which occurred at Tyamnarahalli in the Sira Taluk, & thereby tried to create suspicion as to the cause of death which was proved not to be homicide.

The appointments of Hospital Assistants are made with the sanction of Govt and are also notified in the Gazette. Their Removal from office also seem to require the sanction of Govt.

Draft sanctioning the prosecution of the Hospital Assistant is put up -

J. D.

104

the matter develops
we may submit it to
the Nawab Sahib thro'
the Commissioner. Please
send a packet of the
Lucerne Lawn

G.R.S.-12]

General and Revenue Secretariat.

File No. 75 of 1903-04

Serial No.	
2	The letter from the Deputy Commr was forwarded with this office no. 2752 J 28/6/04. to the Senior Surgeon with the request to favour the Govt with his opinion in the case
3	Meanwhile the Deputy Commissioner forwarded letter no. 658 dated the 25th June 1904. stating that the Magistrate's order is in revision before the Chief Court and requesting Government sanction to prosecute the Hospital Assistant
4.	This was forwarded to Senior Surgeon in continuation with this office letter no. 2824 J dated the 30th June 1904.

153

1904 04 ✓ J 1853.

From

K. Doraswami Iyer Esqr
Deputy Commissioner
Kadur District

To

L. Anantakrishna Rao Esqr
Secretary to the Govt of
Mysore, Genl and Rev
Depatts.

Dated 11th
Despatched 12th } June 1904
Received
Genl. No 640
No

Cucls. No. 3

Reporting under the circumstances represented, that Sanction of Government may be accorded to prosecute the Hospital Assistant Nanjundaiah under Chapter XI of the I.P.C.

No. 640

Deputy Commissioner's Office
Tenkasi District

Dated, Tenkasi, 11th June 1904

From

K. Duraiswami Iyer Esqr
Deputy Commissioner
Tenkasi District

To L. Anantaraman Roo Esqr B.A.
Secretary to the Government of
Mysore General and Revenue
Departments.

Sir,

I have the honor to send herewith a copy of my docket no A dated the 11th instant to the Senior Surgeon and Sanitary Commissioner with the Government of Mysore in regard to the prosecution of a Hospital Assistant for offences under Chapter XI of the I. P. C.

2. One of my Assistant Commissioner Magistrates Mr. Ramiswara Rao enquired into the circumstances of the death of one

Hemmant the and after taking the evidence of some witnesses including the Hospital Assistant concluded that it was an accidental death and not murder and sent up the records to my Court under Section 476 C.P.C. for action against the Hospital Assistant. Thereupon a Copy of the Assistant Commissioner Magistrate's order was furnished to the Senior Surgeon and Sanitary Commissioner along with a letter requesting that the Hospital Assistant may be relieved and enabled to take his trial. The facts of the case will be found in the enclosure to My letter No. 638/7 dated 4th May 1904 to the Senior Surgeon which will probably be before you about the time that this reaches. The Senior Surgeon and Sanitary Commissioner by Docket No. 5168 dated the 16th May and subsequent reminder asked to be informed of the earliest date on which

the Hospital Assistant should be relieved and was answered that the case would be heard on the 6th June by the 1st Assistant Commr. Magistrate (Mr. Seshadri Iyengar) to whom it was going to be referred. At the request of the Hospital Assistant and also of the prosecution on the 6th instant the Magistrate granted an adjournment to the 17th It may be mentioned here that the sanction required by Section 195 Cr.P.C. in regard to certain offences under the Penal Code was rendered unnecessary by the Court itself referring the case to me under section 476 Cr.P.C. In case the Hospital Assistant belongs to a class of Public Servants not removable from office without the sanction of Government I beg that the necessary sanction under section 197 Cr.P.C. may be kindly accorded.

Proceedings are stayed pending orders of Government.

I have the honor to be
Sir,
Your most obedient Servant.

B B Blunt adam
for Deputy Commissioner.
BCL

From K. Doraiswami Iyer Esqr
District Magistrate
Tenkasi District

To
Lieut. Col. J. Smyth M.D.
Senior Surgeon and Sanitary Commissioner
with the Government of Madras

Dated 11th June 1904. No. A

Senior Surgeon and Sanitary Commr
Urgent Wire.

"Government sanction necessary to prosecute Hospital Assistant Manjunath to please stay Proceedings.

In acknowledging the above, Undersigned has the honor to state that the case stands for the 17th instant but will be adjourned pending Government sanction for the prosecution.

"Signed" K. Doraiswami Iyer
District Magistrate

"True"

B. Bhimasankaram
for District Magistrate
MM

No 638/Gen

Office of the District Magistrate
Tumkur District

Dated, Tumkur, 4th May 1904

From
K. Doraswami Iyer Esqr
District Magistrate
Tumkur District

To Lieut: Col: J. Smyth ~~Esqr~~ M.D.
Senior Surgeon and Sanitary
Commissioner with the Government
of Mysore

Sir,

I have the honor to send you herewith a Copy of the order passed by the 2nd Assistant Commissioner Magistrate of Tumkur in the matter of the death of one Hanumenta at Yennara halli Sira Taluk. It will be seen from the order that the Hospital Assistant of Sira who conducted the post mortem Examination is to be prosecuted for the offence of fabricating false evidence under Section 192 I.P.C. I beg therefore that you may be so good as to make arrangements to relieve him of his duties at Sira.

I have &c.
"Signed" K. Doraswami Iyer
District Magte

"Copy"
B/Shivanadam
for district Magistrate

In the Court of the 2nd Grade Assistant Commissioner and 1st Class Magistrate Tumkur District

Dated 2nd May 1904.

Present. P. Srinivasa Rao Esqr
1st Class Magistrate.

Criminal Mis: Case No: 33 of 1903-04

Order.

This is a case of inquiry under Section 176 of Criminal Procedure Code, into the cause of death of one Hanumanta, who was a resident of Yemmarahalli in Sira Taluk, and the case has been referred to this Court by the District Magistrate for disposal.

The following persons were examined in connection with the inquiry:-

1. Timma, 2 Nagappa, Patel: 3 Bavanna, 4 Huliyappa, 5 Hadara, 6. Ibrahim Khan, 7 T. Nanjundiah, Hospital Assistant, & Subba Rao, Police Jamadar and 9 Dr. C. Rajaram Rao, Assistant Surgeon.

The following Exhibits were filed.

A. Inquest Report or Mahazer dated 24th March 1904.

B. Upadi ley the Police forwarding the
reply to the Hospital Assistant, dated
24th. March 1904.
C. Copy of Inquest Report sent with
the above.
D. Post Mortem Certificate, dated
24th March 1904.
E. Jamadar's Explanation dated 2nd
April 1904
F. Copy of Jamadar's reply to the Hos-
pital Assistant dated 27th March 1904
G. Hospital Assistant's reply in original
with above.
H. Deposition of the Hospital Compounder
Subba Rao, taken by the Amildar village
-wise of Sira ~~dated~~ on the 30th April 1904.

The facts, as disclosed by the record
in evidence in this case, are that the
deceased Hanumanta, had been for
the past 30 years, a servant in the family
of one Keelaar Huliyappa, a Cultivator
and trader in Kambaly, residing in
Sira. Hanumanta lived alone in a
house of Huliyappa's, situated on a
field outside the village of Yemmarahally,
two miles from Sira, and was cultivating
the said field and also a garden, both
the property of Huliyappa. He received

no regular wages in money, being fed and clothed by his master. He cooked his own food and was not attached to any woman.

It appears from the evidence of Timma a boy of 18½ years, and a distant Cousin of Kuliyappa, that he (the boy) was going from time to Yemmarahally once a week or so, to work the Kapilay with a view to irrigate the garden, and that he did this with the help of Hanumanta. Timma says that 25 days before the last Pogadi, he worked the Kapilay with Hanumanta, who then seemed unwell and said he was getting fever. 6 days after the Pogadi, the boy went to Yemmarahally one morning to water the garden as usual. He did not then find Hanumanta in the house, nor in the village. He went next to the garden and found under the trees near the well, a Kambaly spread and a turban, and a pair of slippers lying, all the property of Hanumanta. He then descended into the well and discovered a dead body floating in the water. He became

there was no absolute need in the circumstances of the case, to send the body for Post Mortem, the Jamadar decided on doing so, on the ground of expediency. It was accordingly sent to Sira Hospital, and the Hospital Assistant, Nanjundiah, held the Post mortem, on the same day, viz: 24th March 1904 in the presence of the Jamadar. At the close of the Post mortem the Jamadar asked the Hospital Assistant for his opinion as to the Cause of death, but the latter said, he would let him know the next day.

The Hospital Assistant did not give his opinion to the Police until late on the night of the 26th March, when a Constable being sent to him, the said Constable brought back a Cover, which Contained the Hospital Assistant's opinion in writing. This opinion was expressed in the following words. "Death may probably be due to Rupture of the Liver and Crushing of the testicles." In deference to this opinion, the Police felt called upon to take up the Case as one of murder with a view to investigation, but the earnest attempts to discover anything in the history of the deceased's relations with any person or persons, that might furnish a foundation for a theory

of homicide, have absolutely to [redacted]

I have now to decide what the death in this case has to be put down to, that is to say, whether it was homicidal, and this leads directly to a consideration of the grounds upon which the Hospital Assistant has formed his opinion. I may say at the outset that the formal Post Mortem Certificate of the Hospital Assistant subsequently received by the Police, through the District Medical officer of Tumkur, is to the effect that the District Medical officer differs from the Hospital Assistant as to the Cause of death. His opinion is that the death was due to Asphyxia.

The District Medical officer says in his evidence before this Court, that the appearances described in the Certificate of the Hospital Assistant, in regard to the brain, lungs, larynx and trachea, are those which are consistent with Asphyxia. He adds that he differs from the Hospital Assistant, for the following reason:- "He (the Hospital Assistant), says that the crushing of the testicles was the Cause but according to his own account, the testes were

missing. If they were
was it possible for him to say
they had been Crushed? If in the
says that Rupture of the Liver, was
the Cause. If that were so, there should
have been hoemorrage; yet, accord
-ing to his statement, there was blood
only in the ruptured part, and not
in the abdominal Cavity. Further
there was no reason for the con-
-gestion of the brain and other organs.
The Congestion of the tissues around
the neck, said to have been discovered
upon dissection is also Consistent
with Asphyxia!

It is clear from the District Medical
Officers evidence, that the Hospital
Assistants opinion in this case is
not entitled to any value what
-ever. Asphyxia may be a result
of drowning. The District Medical
Officer's opinion therefore as to the
Cause of death, harmonizes with
the actual facts and Circumstances
disclosed at the Inquest. There can
be no hesitation accordingly

deciding that the present is no case of homicide.

It will be noticed that the Hospital Assistants Certificate was the sole cause of the difficulty in this Case. If his opinion was an honest error of judgment, it might, at the worst, go to discount his professional Capacity and fitness to Conduct Post mortem, in important Criminal cases. But in the present instance, there is abundant reason to show that there was more than a mere error of judgment. In as much as to the organs of generation, the Hospital Assistant says in his Certificate "both the testes are missing. Scrotum torn away". The District Medical officer very properly says that this appearance cannot warrant the opinion that there was a Crushing of the testicles. But the question in this case is whether the absence of the testes, and the tearing away of the scrotum was a fact, actually observed at the Post mortem.

The Inquest Report does not say a word about this

alleged injury to the organ of Generation
The Police records on this Case show
that on receipt of the Post. Mortem
Certificate by the Police Superintendent,
he directed the Amildar to Examine
the Punchayetdars and others as to
whether the alleged injury did Exist
during their Examination of the body
at the Inquest. The Punchayetdars
and the Jamadar were positive
that they carefully Examined the body
and noticed no such injury.
In their Examination before this
Court, they adhere to their statement
that the injury did not Exist. I
attach the greatest importance to the
evidence of one Madigar Kadara.
He is one of those who took the body
out of the well and carried it above
for the purpose of Examination
by the Punchayatdars. He says that
the body was moved from side to
side, with a view to careful Exa-
-mination, and he is sure that the
male organ, including the testes
was intact. During Life

before this Court, on the [illegible]
It was elicited from him that he was
present in the dissecting room during
post mortem, holding the body while
it was being cut, that the person who
did the cutting work with the knife,
was the Compounder and not the
Hospital Assistant, who simply stood
by taking down notes. Kadara further
stated that the Compounder did
cut, among other things the male
organ and the testicles, and these
were present then. I considered it
important at this stage, immediately
to ascertain how far the Compounder
was going to corroborate Kadara
in regard to these allegations; and
with this view, instructed the Sub
Assistant Magistrate of Sira, to examine
the Compounder at Sira. The Com-
pounder's deposition (Ex: A)
taken on the 30th April shows that
he fully bears out the statement
of Kadara.

A Copy of the Inquest Report had
been sent to the Hospital Assistant
along with the dead body.

[redacted] before [redacted]
and noticed the discrepancy between
it and the actual Condition of the
dead body in regard to the organs
of generation. Yet he says he did
not question the Jamadar or draw
the latter's attention to the matter, be-
-cause he (the Hospital Assistant)
was engaged in taking notes. Regard-
-ing these notes, he says he took them
on loose paper, which he has not
preserved. Asked as to why he
delayed giving his opinion to the Police
till the 26th March, he denies having
delayed and says that he remembers
that he gave it on the 24th March alone.
Yet there is his own writing (Ex: G)
which goes to prove and disproves
by him, that he gave his opinion
not earlier, than on the 26th March 1904.

Why the Hospital Assistant
should misbehave in the manner
implied in the foregoing remarks is a
pertinent question in this case.
The answer to this question

be found in the evidence of the
Jailor of Suliyappa, - Bevanna
explains how he was asked by the
Hospital Assistant for a present
in connection with the Post mortem
certificate which had to be given in
this case and how Bevanna refused
to do any such thing.

Another motive for the Hospital
Assistant's Conduct is perhaps con-
nected with the friction that exists
between himself and the local Police
officers. The Jamadar's Explanation
(Ex: E) mentions a number of
instances in which the Hospital
Assistant misbehaved with
reference to Police cases, and in
which such misbehaviour was
brought by the Police to the notice of
the higher Departmental Authorities.

Considering the immense im-
portance which is attached to
medical evidence as a factor
in the furtherance of Criminal
justice, I cannot help expressing
the opinion that the Hospital
Assistant

very seriously in this case. Regarding 19
the organ of generation, he has made
a false entry in the Post mortem
Certificate. His act in this case
amounts to the offence of fabrica
-ting false evidence, as defined
in section 192 of the I. P. Code, and
made punishable under the next
succeeding section. Ends of Justice
that justice requires that Hospital
Assistant Nanjundiah, should be
prosecuted for the said offence,
and I accordingly direct under
section 476 of the C. P. C. that the
proceedings in this case be for-
warded to the Court of the District
Magistrate for the necessary
inquiry. I refrain from order
-ing Nanjundiah being taken in
custody, as such a course, if
suddenly taken, might prejudice
the Hospital work at Sira, and it
is that he should be duly

being sent to this place, in Communi
20
cation with the Medical Department.

Signed V. Sreenivasa Rao
Magistrate.

Copy.

B.B. Shivaram
for District Magistrate.
Md.

J 1930.

1904

From

The District Magistrate
Tanjore

To The Secretary to Govt.
Rev. & General Department

Dated

Despatched 25th June 1904 Rev

Received

General No. 658.
No.

Enclosure No. 1 file

Requesting sanction
to prosecute the Hospital
Assistant Vanjundayya.

Read: on 25/6/1904
at 6.30 p.m.

To The Dy: Surgn.
On the previous reference
from this Dept. we
have called for the Senior
Surgeon's opinion. We
may now send him a copy of
this letter & ask for
very early reply on the
subject. Kindly give a
docket accordingly &
bring

25/6/1904

District Magistrate's Court.
Deputy Commissioners office
Dated Tumkur 18th June/04

No. 658

B. K. Venkatavardiengar Esq.
Secretary to the Government
of His Highness the Maharaja
of Mysore, General and Revenue
Secretariat. Bangalore.

Sir.

In continuation of my letter
No: 640 dated 11/12 June 1904, I
have the honor to inform you that
I have since received and answered
a letter from the Senior Surgeon upon the subject of the prosecution of Hospital Assistant Ramjimdayya. I am enclosing a copy of my answer for the information of Government and also a copy of the order passed by H. S. F. Specie as a Rao Assistant Commissioner and Magistrate. I apprehend that it will be some time before the Senior Surgeon addresses

Copy enclosed

addressed government on the subject.

2 The question at the outset was whether Hanumantha met his death accidentally or was murdered. The Hospital Assistant favored the latter view but the actual facts favored the former. The investigation that was had by the Police was supplemented by an enquiry by a magistrate. The magistrate's order would show that there were three offences committed by the Hospital Assistant — The giving of false evidence and the fabricating of false evidence as defined in sections 191 and 192 of the I. P. Code and punished under section 193 and the issuing of a false certificate punishable under section 197. The false evidence was upon two points — (1) who dissected the body (2) what was the Condition of the Intestines.

Although there were three distinct offences to base a prosecution upon, it was considered sufficient to confine ourselves to one of them and to give the preference to the

The charge of fabricating false evidence as defined in section 192 I. P. C, as the Magistrate had laid greater stress upon that offence and as the Case had started on the Hospital Assistant's certificate of autopsy granted in his Capacity of a public servant. Having thus decided this question I Communicated with the head of the department to which the man belonged. I am free to confess that had the delay that have now cropped up been foreseen I would have myself addressed the Government for the necessary sanction or taken steps to institute a prosecution for the offence of giving false evidence when under examination on Oath there had devolved upon him the duty owed by all man to Public Justice to answer all relevant questions truly — even those tending to incriminating answers. If a false certificate had issued that was no reason to tender false evidence

evidence and commit a second offence however much to his interest it was to speak falsely in support of his certificate. I am referring here to section 132 of the Evidence act. It is not necessary to discuss now the various Contradictory - ries upon that comparatively clear and simple section.

3 It seems that a departmental enquiry is intended. That enquiry can have no effect upon our proceedings and I have no concern with it but would venture to submit for the consideration of the Government an earnest hope that there is no idea in any quarter that the Magistrates at Tumkur though used all their life to weigh and sift evidence and to determine upon points of fact and law, have failed in that regard in the case of Hospital Assistant Ranjundayya.

4 This lengthy communication has

has been necessitated by the Senior
Surgeon's letter No: 5661 dated the
12th June 1904 in which he has deemed
it fit to stigmatise my procedure
as "illegal". As regarded the sanc-
tion to prosecute the Hospital
Assistant I submit that it
was not for me to anticipate
that the head of the Medical
Department was not aware that
the public servant in question
was one who was not removable...
from office by himself.

5. I should not forget to mention
here that the Magistrate's order is
for revision before the Chief Court.
Should Government decide that
Hospital Assistants are not
removable from office without their
sanction, I beg that the necessary
sanction may be accorded in
the present case.

I have the honor to be
Sir
Your most Obedient Servant

K Doraiswamy Iyer
Offg. Deputy Commissioner
District Magistrate of Tinnevelly

In the Court of the 2nd Grade Assistant Commissioner and 1st Class Magistrate

Trichinopoly District.

Dated 2nd May 1904.

Present: P. Srinivasa Rao Esq.
1st Class Magistrate.

Criminal Misc. Case No. 26 of 1903-04.

Order.

This is a case of inquiry, under section 176 of Criminal Procedure Code, into the cause of death of one Kanni muttu, widow of Resident of Ugamma Palli in the Sira Taluk, and the case has been referred to this Court by the District Magistrate for disposal.

The following persons were examined in connection with the Enquiry.

1. Linga, 2. Vajjavendra Patel, 3. Bariamma, 4. Huliyappa, 5. Kadara Obalakshmi Khan, 7. Jeevanjinaiah, Hospital Assistant, 8. Subba Rao, Police Jamadar and 9 Dr. C. Rajaram Rao, Assistant Surgeon.

The following Exhibits were filed.

A. Inquest report of Mahazar

dated 24th March 1904.

B. 47 Yadiley the Police forwarding the body to the Hospital Assistant, dated 24th March 1904.

C. Copy of Inquest report sent with the above.

D. Post-mortem Certificate, dated 24th March 1904.

E. Jemadar's Explanation dated 2nd April 1904.

F. Copy of Jemadar's Yadi to the Hospital Assistant dated 27th March 1904.

G. Hospital Assistant's Reply in original to the above.

H. Deposition of the Hospital Coun Kounden Subba Rao, taken by the Amildar Magistrate of Sira on 30th April 1904.

The facts as disclosed by the recorded evidence in this case, are that the deceased Hanumanta, has been for the past 30 years, a servant in the family of one Kumbar Anbiyappa a cultivator and trader in Kamboly residing in Sira. Hanumanta lived alone in a house of Anbiyappa's,

situated on a field outside the village of Yemmarahally, two miles from Sira, and was cultivating the said field, and also a garden both the property of Huliyappa. He received no regular wages in money, being fed and clothed by his master. He cooked his food and was not attached to any woman.

It appears from the evidence of Timma, a boy of 18 years, and a distant Cousin of Huliyappa, that he (the boy) was going from Sira to Yemmarahally once a week or so, to work the Kapilay with a view to irrigate the garden, and that he did this with the help of Hanumanta. Timma says that 3 days before the last Dasadi, he worked the Kapilay with Hanumanta, who then seemed unwell and said he was getting fever. 6 days after the Dasadi, the boy went to Yemmarahally one morning to water the garden as

deceased. He did not then find Ramu
Pindia in the house, nor in the
village. He went next to the
garden and found under the
tree near the well, a Rumbaly
spread and a turban and a pair
of slippers lying, all the property of
deceased. He then descended
into the well and discovered a
dead body floating in the water.
He became afraid, and went
to the Patel of the village and told
him of what had happened. He
came back to the garden with the
Patel, and pointed out the body in
the water. Then he went away to
Sira to give information to Nanjappa.
The Patel also sent his report to the
Police. The Police Duffadar arrived
in the afternoon. The Inspector
and the Jamadar were both on
duty at Veerapura. The Jamadar
returned to Sira in the evening
and made enquiries after Gundadar,
proceeded to Yammanahally, the
next morning. He had the body
removed from the well and

carefully examined it in the presence of Peacehaystalars. No external marks of injury, such as might account for death, were observed. The fact that the deceased was known to be suffering from fever was elicited at the inquest. This combined with the discovery of the deceased's Hat only near the well, was sufficient to raise a strong presumption that death was due to drowning, the drowning being either the result of accident, or a voluntary act. This was in fact the opinion of the Peacehaystalars, and though there was no absolute need in the circumstances of the case, to send the body for post mortem, the Jurymen decided on doing so, on grounds of expediency. It was accordingly sent to Sria Hospital, and the Hospital Apothecary, Venkatramiah, held the post mortem, on the

Thursday, the 24th March 1904 in the presence of the Jamadar. At the time of the Post Mortem, the Jamadar, ended the Hospital Assistant for his opinion as to the cause of death, but the latter, said, he would let him know the next day.

The Hospital Assistant did not give his opinion to the Police until late on the night of the 26th March, when a Constable being sent to bring the said Constable brought back a paper, which contained the hospital Assistants opinion in writing. His opinion was expressed in the following words:- "Death may probably be due to Rupture of the Liver and Crushing of the testicles." In reference to this opinion, the Police felt called upon to take up the case as one of murder, with a view to investigation, but their earnest attempts to discover anything in the history of the deceased's relations with any person or persons, that might furnish a foundation for a theory of

homicide, have absolutely to nothing.

I have now to decide what the death in this case has to be put down to, that is to say, whether it was a homicide, and this leads directly to a consideration of the grounds upon which the Hospital Assistant has formed his opinion. I may say at the outset that the formal Post mortem certificate of the Hospital Assistant subsequently received by the Police, through the District Medical officer of Lunatics, shows that the District Medical officer differs from the Hospital Assistant as to the cause of death. His opinion is that the death was due to Asphyxia.

The District Medical officer says in his evidence before this Court, that the appearances described in the certificate by the Hospital Assistant, in regard to the brain, lungs, larynx and trachea, are those which are consistent with Asphyxia. He

would that he differs from the Hospital
Assistant, for the following reason:
"He (the Hospital Assistant) says
that the bruising of the textile was
the cause, but according to his own
account, the textile were missing.
If they were missing, how was it
possible for him to say that they
had been crushed? Again, he
says that rupture of the liver,
was the cause. If that were so,
there should have been hemorrage;
yet, according to his statement, there
was blood only in the ruptured
part, and not in the abdominal
cavity. Further there was no reason
for the congestion of the brain and
other organs. The congestion of the
face & around the neck, said to
have been discovered upon dissection
would be consistent with asphyxia".
We submit from the District Medical
Officer's evidence that the Hospital
Assistant's opinion on this cause is
not entitled to any value whatever. Asphyxia may be a
result of drowning. The District

a Medical officer's opinion therefore as to
the cause of death, harmonizes with
the medical facts and circumstances
disclosed at the Inquest. There can
be no hesitation accordingly in
deciding that the present is a case
of homicide.

It will be noticed that the
Medical Specialists' Certificate
was the sole cause of the difficulty
in this case. If his opinion was
an honest error of judgment, it
might, at the worst, go to discount
his professional capacity and
fitness to conduct Post mortem,
in important Criminal cases.
But in the present instance, there
is abundant reason to show that
there was more than an error
error of Judgment. In regard to
the cause of Generalis, the Hon-
ble Specialist says in his Certificate
"both the testes are wasting, Senatum
Concussum". The District Medical
officer very properly says that this

appearance cannot warrant the opinion that there was a crushing of the testicles. But the question in this case is whether their absence of the testes, and the wasting away of the scrotum was a fact, originally observed at the Post mortem.

The Inquest report does not say a word about this alleged injury to the organs of generation. The Police records in this case show that on receipt of the Post mortem certificate by the Police Superintendent, he directed the Constables and others as to whether the alleged injury did exist during their Examination of the body at the Inquest. The Practitioners and the Constables were positive that they carefully Examined the body and noticed no such injury. On their Examination before this Court, they adhere to their statement that the injury

did not exist. I attach the greatest importance to the evidence of one Kadjar Kadara. He is one of those who took the body out of the well and carried it above for the purpose of Examination by the Panchayatdars. He says that the body was moved from side to side, with a view to careful Examination, and he is sure that the male organ, including the testicles was in fact. During Kadara's Examination before this Court, on the 29th April 1904, it was elicited from him that he was present in the dissecting room during Post mortem, holding the body while it was being cut, that person who did the cutting work with the knife, was the Compounder and not the Hospital Assistant, who simply looked by taking down notes. Kadara further stated that the Compounder did not,

among other things the male organ and the testicles, and these were present then. I considered it important at this stage, immediately to ascertain how far the Compounder was going to corroborate Kadara in regard to these allegations, and with this view, instructed the Assistant Magistrate of Siria, to examine the Compounder at Siria. The Compounder's deposition (Ex: H) taken on the 30th April shows that he fully corroborated the statement of Kadara.

A copy of the Inquest Report had been sent to the Hospital with the dead body. He says he read the report before Post mortem, and noticed the discrepancy between it and the actual condition of the dead body in regard to the organs of generation. Yet he says he did not question

the Jamadar or draw the latter's
attention to the matter, because 36 he
(the Hospital Assistant) was engaged
in taking notes. Regarding these
notes, he says he took them on
loose papers, which he has not
preserved. Asked as to why he
delayed giving his opinion to the
Police till the 26th March, he denies
having delayed and says that
he remembers that he gave it on
the 24th March alone. Yet there is
his own writing, (Exhibit G) which
goes to prove his admission to him,
that he gave his opinion not earlier
than on the 26th March 1904.

Why the Hospital Assistant
should misbehave in the manner
implied in the foregoing remarks
is a pertinent question in this case.
The answer to this question may
be found in the evidence of Bir-
bhadra, brother of Mulchand.
Birbhadra explains how he was
asked by the Hospital Assistant

for a fresh to in connection with the
post Mortem Certificate which had
to be given in this case and how
Sawaina refused to do any such
thing.

Another matter for the Hon-
ble the Assistant Conductor was
also connected with the friction
that exists between himself and
the Local Police Officers. The
Inquirer's Explanation (Exhibit E)
mentions a number of instances
in which the Hospital Assistants
misbehaved with reference to
Police cases, and in which such
misbehaviour was brought by the
Police to the notice of the higher
Departmental authorities.

Considering the immense im-
portance which is attached to medical
evidence as a factor in the furtherance
of criminal justice, I cannot help
expressing the opinion that the Hon-
ble Assistant has committed
himself very seriously in this
case. Regarding the organ of
Incubation, he has made a false

entry in the Post Mortem Certificate.
38
It is not in this case contended
the offence of fabricating false
evidence, as defined in section
192 of the I.P.C. and made punish-
-able under the next succeeding
section. Law of opinion that
Practice requires that Hospital
Assistant shd injudiciously, should be
prosecuted for the said offence,
and I accordingly direct under
section 476 of the C.P.C. that the
proceedings in this case be for-
-warded to the Court of the District
Magistrate for the necessary inquiry.
I refrain from rendering this
Judicial being taken in custody,
as such a course, if suddenly
taken, might prejudice the
Hospital work at Sera, and it is
meet that he should be duly ac-
-cused from his duty, by a message
being sent to his place in Communication
with the Medical Department

"Signed" P. Sreenivasa Rao
1st Class Magistrate

C/Jy

K D Ramaswamy
D. District Magistrate.

From

Lt. Col. John Smyth M.D.I.M.S
Offg: Senior Surgeon & Sanitary Commr
with the Govt of H.H the Maha
raja of Mysore, Bangalore

To

The District Magistrate
Tumkur.

No: 5651.
B/13 June 1904.

Sir

I have the honour to inform you that I have just received a petition from Hospital Assistant Ranjeendraiya, late of Sira now doing duty at Tumkur Head Quarters, in which he says he was arrested on 22nd Ultimo and released on bail to stand his trial on the charge of fabricating false evidence etc.

2. I am advised that the procedure adopted in this case is illegal, and that under section 197 (1) C.P.C the sanction of Govt or my sanction should have been obtained before placing the man under arrest. Pending such sanction, please therefore stay proceedings against the Hospital Assistant.

4D

3. My own enquiry into this case has been delayed, pending an enquiry into an alleged previous misconduct on the part of this same Hospital Assistant, but as the papers connected with the case seem to have been lost in the post, I will take up the present case at once.

4 I shall be obliged by your kindly furnishing me with Exz G. referred to in the order of the Magistrate dated 2nd May 1904; also evidence as to whether the body of the deceased was absolutely naked when removed from the well; if not naked, then what sort of clothing was on it.

I have the

(Signed) J. Smyth M.D. Lt.Col.
I.M.S.
Offg Senior Surgeon

Copy

W Doran Jr

Deputy Commissioner.

No 740

Office of the District Magistrate 41
Tumkur District.

Dated, Tumkur, 16th June 1904

From K. Doraswami Iyer Esq
District Magistrate
Tumkur District.

To Lieut. Col. J. Smyth. M. D. I. M. S.
Senior Surgeon and Sanitary
Commissioner with the
Government of Mysore.

Sir,

With reference to your letter No 5651 dated the 13th Current, I have the honor to draw your attention to my letter No 638 dated 4th May 1904 which requested that the Hospital Assistant of Sira might be relieved and enabled to take his trial. The Copy of the Assistant Commissioner Magistrate's order that accompanied it showed step by step the grounds upon which the Hospital Assistant was considered to have committed the offences of giving false evidence and fabricating false evidence In answer to my letter was received your docket No 5168 dated 16th May 1904

working to be informed of the earliest date upon which the Hospital Assistant should be relieved. It was followed by a reminder No 5258 dated 20th May 1904. No other interpretation could be put upon those dockets than that you were ready to receive the offender of his duties in compliance with my requisition. I then referred the case to the Assistant Commissioner Magistrate at Maiduguri fixing the date of hearing to the 6th June and issued a warrant against the Hospital Assistant with bail provided for his appearance before the Magistrate on that date. And as a matter of fact you enabled him to appear at Maiduguri on the 6th. If the Hospital Assistant was a public servant who was not removable from service without the sanction of Government it must remain a matter for regret that your Communication gave no indication

of it. However, I applied to Govern-
ment for the necessary sanction
upon the receipt of your Urgent
wire.

2. With reference to the depart-
mental enquiry that is intended
I beg leave to suggest for your
consideration that it can have
no effect upon the procedure that
has been had so far, whatever
weight it might have later on in
the course of the regular trial.
The records of the investigation
conducted by the Police showed up
the Hospital Assistants conduct
as highly suspicious but in order
to be better satisfied on that score
I had the case gone into by a
Magistrate of standing and experience.

I have &c.

"Signed" K. Doraiswamy Iyer
District Magistrate

"Copy"

K Doraiswamy Iyer
District Magistrate.

bjf

8/802

To

The Senior Surgeon [illegible]
Savoy Comp: with the
Govt of Mysore

No. 2792 Coll. Notes

Date: 28/6/04

Sir,

I am directed to
forward herewith, in origina
letter No. 640 dated the 1
June 1904 from the Deputy
Commissioner, Tumkur Dist
and its Enclosures, regarding
prosecution of one Nanjunda
Hospital Asstt of the Sira Taluk
for the offence of fabricating
fal

false evidence under Sec 192 I.P.C.
45
code by making a false entry
in the post mortem certificate
furnished by him in connection
with the death of one Hanu-
manta at Yammanhalli
village, Sira Taluk, and to
pass request that you will
be so good as to favour Govt
with your opinion in the
Case.

I have etc

Off[g] Secy

this Evening

SN
25/6/04

46

To.

The Senior Surgeon
Kea

Dated

No 2821 of 30/6/04

Sir,

In continuation of this office letter No 2792 dated the 28th June 1904, calling for your opinion in connection with the proposed prosecution of Hospital Assistant Manjunda of the Sira Taluk, I am directed to forward herewith a copy of letter No 658 dated the 25th June 1904 from the Dy Magistrate of Tumkur and to request the favour of your very early reply on the subject.

I have the

I have the

Typed 30/6/04

Applied

x Enclosures need not be sent

Diary No. 633

Dated 23rd July 1904

From

Lt. Col. John Smyth M.D., I.M.S.

Offg. Senior Surgeon and Sanitary Commissioner,

with the Government of H.H. the Maharaja of Mysore,

Bangalore.

To

B. K. Venkatavaradaiengar Esqr.,

Offg. Secretary to the Government of H.H. the Maharaja

of Mysore, General and Revenue Departments,

Bangalore.

Sir,

With reference to your No. 2821/J dated 30th June 1904 anent the prosecution of Hospital Assistant Nanjundayya of Sira Taluq, I have the honor to state that a full reply on the subject has already been furnished with this office No. C. 22 dated 11th July 1904.

I have the honor to be,

Sir,

Your most obedient servant,

M.D.

Lt. Col. I.M.S.

Offg. Senior Surgeon & Sany. Commr. M.G.

A.T.R.

III V. 6.9

1249

1904

From Lt. Col: John Smyth M.D. I.M.S.
~~The~~ SENIOR SURGEON AND
SANITARY COMMISSIONER,
MYSORE GOVERNMENT,
BANGALORE.

To B. K. Venkataramadaiengar Esq: Secretary to Govt
Gen'l Secy Dept
Bangalore

Dated 23.7.04

Despatched

Received

General No. G. 52
No.

Enclosure No. Nil

Stating that a full reply has already been furnished anent the prosecution of Hospital Assistant Nanjundayya of the Sira Taluq.